

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
January 28, 2004
Montana Electric Cooperatives' Association – Great Falls, MT

COMMITTEE MEMBERS PRESENT

Senator Walter McNutt, Chairman
Representative Gary Matthews, Vice Chairman
Senator Debbie Shea
Representative Alan Olson

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Frank E. Buckley, Utility Analyst
Mary Wright, Attorney
Mandi Shulund, Secretary

VISITORS PRESENT

Dennis Lopach, NorthWestern Energy
David Wheelihan, MECA General Manager

CALL TO ORDER

The meeting was called to order by Chairman McNutt.

MINUTES OF THE PREVIOUS MEETING

MOTION: Representative Olson moved approval of the minutes of the September 23, 2003 meeting.

VOTE: The motion passed unanimously.

NorthWestern Energy – Electric Default Supply Procurement Plan

Bob Nelson introduced Dennis Lopach of NorthWestern Energy (NWE) who gave a presentation of NWE's Electric Default Supply Procurement Plan recently filed with the PSC. Dennis handed out the transmittal letter and the executive summary of the filing to

the committee members. In the early 1990's, Montana Power Company (MPC) settled litigation with The Natural Resources Defense Counsel, agreeing to put together a planning process that became known as the least-cost planning process. The PSC subsequently adopted rules and there is statute that pertains to this planning process, which was an effort to put together a disciplined planning exercise by which MPC, as a vertically integrated company, to make decisions about plant additions. This process was an effort to come up with a more collaborative, less controversial way of figuring out where power would come from in the future. As part of this process, MPC worked with an advisory committee that included MCC. This committee researched resource planning and additions and filed a plan with the PSC, where specific decisions would be judged against the plan. This plan turned out to only be used in a few cases because prices had stabilized by then and this process basically broke down when MPC decided to make a substantial purchase from Basin Power against the advice of the advisory committee. In 2001, when MPC needed to replace the PPL buy-back contract, the previously mentioned type of background planning and advisory committee did not exist. Toward the end of the 2001 legislative session, MPC concluded negotiations with PPL on a base-load contract and the 4¢ contract, which became the dump-the-deal movement. At this same time, MPC negotiated the deal presented at the end of the 2001 session, but never completed the deal because the whole market had begun to feel effects of the California crisis. During mid 2001 MPC started a portfolio of contracts to be presented to the PSC, which was filed in 10/01. This portfolio included some base load contracts from PPL that were well below 4¢ and a relatively short-term contract with Duke. There were a few new projects, such as the Montana Wind Harness deal for around 300 megawatts of wind and the Montana First Megawatts contract. After much contested case activity before the PSC, on 6/21/02 Final Order 6382d was issued, stating that the PPL and Duke contracts were acquired pursuant to industry prudent practices and providing instructions on how the PSC wanted to see acquisitions go forward. During this time, discussions began with the PSC and various stakeholders on how the portfolio should be planned and how procuring resources should be done, which lead to the PSC adopting the default supply procurement guidelines. These guidelines reinstated the advisory committee, which is run basically as it was in the early 90's. This

committee advises NWE through procurement decisions and the consequences of various scenarios. Out of the default supply procurement rulemaking process came HB509, which was a consensual approach to energy legislation. The PSC basically used the same process to put together rules to implement SB247, the advanced approval bill that came out of the 2003 legislative session. NWE then started working on the analysis of the default supply resource planning and procurement plan. NWE's currently intends to move ahead with SB247 and advanced approval filings for a variety of specific projects and will be asking the PSC to look at specific proposals with the plan being the background. NWE would also like to find out if it makes sense to sign long-term contracts bringing electricity into the default supply for the next 10-20 years. The reason this would make sense now and not several years ago is because a major feature of HB509 was to try and provide some certainty as to what the default supply load would consist of. At one time there were restrictions, such as who could move to choice and how long they had to stay if they came back to default supply. NWE feels they currently have a stable load to serve and they can make some planning decisions that will have some long-term consequences without the risk that customers may move to choice in the mean time.

Discussions are currently taking place on the future of the Great Falls facility and another plant that NWE hopes to see proceed this year is in Butte called Basin Creek, which is a relatively small gas fired plant and possibly a small amount of wind. The plant would have ten, 5 megawatt units with reciprocating engines. The total fixed cost payment to Basin Creek would be about \$5 million per year, which is on the total portfolio of roughly \$200 million currently in rates. In the existing portfolio and the \$200 million that NWE pays, \$2.7 million of that goes to ancillary services, or contracting with others to supply NWE with load following capabilities. With the Basin Creek project, the contract that has been negotiated would virtually give NWE operational control of the facility, almost as if it was owned by NWE. The entire plan and other information can be seen at www.montanaenergyforum.com and NWE looks forward to comments and suggestions on the plan. NWE will present individual contracts to the PSC and to the bankruptcy court if they get PSC approval.

Representative Matthews asked Dennis why the PSC initially rejected the Great Falls plant. Dennis explained that the plant was viewed as an affiliate contract at the time it was entered into because of NWE's purchase of MPC. The PSC felt that NWE inadequately explained the payment structure, how risk would be dealt with and the contract did not come out of RFP's which was a strong preference of the PSC. Basically the PSC was not convinced that the customers would be adequately protected.

Representative Matthews asked Dennis if any legislation needed to be created in order for NWE to be able to own generation in Montana. Dennis stated that this has been an on going discussion with NWE, and the NorthWest Power Planning Council (NWPPC) has been looking at this as well. Dennis feels that the way the law reads, NWE is free to own generation as long as they have generation housed in a division of the company that is functionally separate from the distribution. Senator Shea asked Dennis if he had any idea of a time frame to start construction on the Basin Creek facilities. Dennis said that if construction began 3/04, it could be completed by 12/04. NWE has indicated to the advisory committee they would like to pursue stipulations with parties to try and demonstrate to the PSC that there is support for a number of these projects and the importance for them to move along quickly. Representative Olson asked Dennis if NWE had the gas transmission infrastructure in place to hold up the Basin Creek Plant and how much gas btu's per kWh Basin Creek would be able to provide. Dennis responded by saying that Basin Creek has adequate capacity and that more information on the Basin Creek project would be available in the filing. Bob Nelson asked Dennis when the resource specific applications were going to be made. Dennis said they hope to start right away and the sequence would probably start with Basin Creek. Bob asked Dennis when the uncertainty regarding the wind tax credit would be resolved so the status of the wind portfolio could be known and when the Duke contract expired. Dennis hoped the details of the wind portfolio would be worked out within the next two months and he thought that the Duke contract expired in 2010, which is a topic that would be included in NWE's 3-year action plan discussed in the Procurement Plan cover letter. NWE would like to get responses on the proposals currently being made and then would like to bid on the base load to see what prices would be available for 2007. The Duke contract could potentially play a role in reducing exposure when contracts expire in 2007 and

could provide NWE with a useful segue into the years beyond, perhaps even as late as 2018. Senator McNutt asked if the modeling they have done is for variable or peaking power. Dennis stated that it was for everything they need to serve the load, which is expected to grow 1% per year, with high growth, low growth and all possibilities factored in. Dennis encouraged the committee members to attend any public meetings possible, to utilize the website and let NWE know what their positions are.

STATUS OF CASES PENDING - BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

NorthWestern Energy

D2003.8.114 – Petition to Segregate USB Funds: MCC, Large Customer Group and Energy Share jointly filed this petition with the PSC on 8/12/03. The PSC issued Proposed Order 6504 on 8/22/03 that would have become effective had there been no objections. NWE did file objections on 9/11/03 and filed a notice of automatic stay that related basically to all PSC dockets. NWE filed a petition in the bankruptcy proceeding asking to be able to maintain the USB programs as they had prior to the filing of this petition. MCC and the PSC filed comments and objections to this approach, asking for separate accounting and cleaner segregation of the funds. Prior to the hearing, NWE did establish a separate account and the order that came out of the bankruptcy court required segregation and a separate account. The order also contained a finding stating these were not funds of the estate of NWE. The PSC issued Final Order 6504a on 1/8/04 stating that due to the actions of the bankruptcy court and for future purposes, NWE is required to continue to comply with the segregation and the separate accounting after the bankruptcy proceeding is completed.

D2003.10.142 – USB Related Docket: Following advice from the Governor's Advisory Task Force, Governor Martz recommendation reallocating \$1.75 million of unassigned USB funds to low income energy programs. NWE filed an application for reallocation of those funds because technically this process is done through the PSC. \$1.75 million of unassigned USB funds were allocated by way of \$262.5 thousand for weatherization, \$312.5 thousand to Energy Share and \$1.15million to

low income discounts, increasing the electric discount from 15% to 25% and increasing the gas discount from 15% to 36%. PSC issued Proposed Order 6514 on 10/15/03 to take effect 11/1/03.

D2003.8.109 – NWE Financial Investigation: The Financial Investigation was an item that NWE initially maintained as subject to the bankruptcy automatic stay. MCC filed an objection and comments on the request for enforcement of the automatic stay, and the result of that objection was to have some modifications made to the order, based on an agreement with NWE, allowing continuation of this docket. All parties are maintaining their rights in the future to object and NWE can later go into bankruptcy court if they see problems arise in this docket. In the meantime, NWE is providing information and recently provided most of what MCC requested. MCC is reviewing this information to see if there is a need for follow-up requests before testimony is filed. MCC did submit, based on discussions with NWE and MCC's understanding of the bankruptcy process, a proposal for a revised scope of proceedings to make sure there are not any obvious conflicts with the bankruptcy court's jurisdiction. The PSC adopted these revisions in Order 6505b on 12/30/03 so there is a small change in the scope of the proceeding. Many of the issues that MCC wanted to address are still being reviewed and a hearing in this docket is set for June.

03-12872 – Bankruptcy Proceeding: Omnibus hearings are held monthly in the bankruptcy proceedings where all pending motions and petitions are heard. Generally they are administrative matters that MCC is not concerned about, however there are some items that are of interest to MCC. Bob said it seems that everyone involved feels the bankruptcy proceeding is going smoothly and for the most part positively. NWE did arrange post-petition financing and amended their pre-petition credit facility, so there is a reduction in financing costs. NWE also has a credit facility of \$100 million in place that they have not yet had to use. The pre-petition tax payments were authorized, NWE was authorized to comply with pre-petition forward contracts and authority has been given to enter into new forward contracts in the

ordinary course of business. Basically the result of this is that energy supplies have been secured so there have not been any problems with gas and electricity supplies. There has been a segregation of the public purpose funds and the order enforcing the automatic stay has been modified to allow what MCC thinks are some critical PSC proceedings to go forward. There has been a lot of progress in the sale of the subsidiaries. MCC filed comments and response to the petition for approval of an incentive compensation plan, basically not expressing any opinion on the merits of the payments, but seeking to make sure that an order coming out of the bankruptcy court maintained PSC jurisdiction to consider the appropriateness of recovery of those amounts in rates. NWE agreed to include this language in the order. Also, the PSC had concerns about the actual milestones for payments in the proposal and it seems they have worked out an agreement with NWE so Bob understands that there is no remaining objection pertaining to this petition. NWE, through a recent presentation to the PSC, indicated that they expect to file a plan of reorganization by the March deadline and expect to emerge from bankruptcy in early September of this year. They also indicated that they are planning to convert \$900 million of unsecured debt to equity and expect a resulting 55% debt ratio and are not planning any rate increases at this point.

Outside of the court activity, there are on going meetings with the Attorney General's office, The Governor's Office, and the PSC by way of weekly telephone conference calls with financial advisors and MCC Counsel. There have also been creditor committee discussions and MCC has been involved in trying to establish goals and objectives for the bankruptcy proceeding by communicating through the financial advisor and MCC Counsel to NWE. Many goals and objectives are commonly held views, but MCC's specifically are 1) A company that is focused on utility service; 2) Protections in place to avoid unreasonable rates, poor service and a repeat of the current situation. (This is an objective that MCC is pursuing both through the bankruptcy proceedings and the financial investigation. These type of discussions have been referred to as ring-fencing, or some way of protecting the utility consumers from non-utility operations and non-utility allocations of financing and

costs); 3) Consumers to be protected from the costs that are related to the failure of the non-utility operations (MCC does not want an increase in the rates due to costs being shifted from those activities through the bankruptcy proceeding); 4) The utility should provide adequate, reliable and safe service. Some related points to this goal are a financially viable capital structure with an investment grade rating, which is also a shared goal of everyone involved in this. The plan of reorganization needs to be tied to the regulatory expectations so there is not a post-bankruptcy problem with maintaining the plan of reorganization (MCC thought about attempting to establish some service quality baseline so that the achievement of this goal can be measured); and 5) Utility service at just and reasonable rates. It may not be immediately apparent how rates that are set by the PSC relate to the bankruptcy proceeding, but there has to be some determination at the end of the proceeding that the revenues in the reorganization plan are sufficient to sustain the plan and that the plan is feasible. The revenues in large part derive from the regulated rates that are approved by the PSC and since NWE recently acquired this operation from MPC and there has not actually been a NWE rate proceeding, the rates that NWE charges now are essentially based on MPC cost structure and there has been a lot of discussion and concern about when NWE gets out of bankruptcy, what their rates are going to look like compared to the existing rates once the PSC looks at NWE's cost structure post-bankruptcy. MCC is currently working through this issue with NWE.

John Coyle, MCC Counsel, brought up the idea to the financial advisors of some kind of third party service quality audit. Bob understands this idea was fairly well received by NWE so this could be a possibility. Senator Shea asked Bob if any of these goals were laws, such as consumer protection from a cost shift. Bob stated that the statutory requirement is basically just and reasonable rates, and so MCC's view of that is there shouldn't be subsidization going on in effect from utility customers supporting non-utility operations. Senator Shea said that some folks at NWE have assured her that the bonuses would not be put into the rates and that the consumer would not absorb that. Bob stated that in the past, companies have

proposed inclusion of bonus payments and such in rates and have proposed inclusion of things that ordinarily may not have been thought of as utility-related, so these are fact specific issues that are generally worked out in contested cases.

D2002.6.63 – Application to Extend Availability of QF-1 Tariff through 6/30/07: The PSC issued Final Order 6459a on 12/9/03 granting the application, noting that several issues would be addressed in the 2003 Cost Compliance Filing. MCC is not active in this docket but are reviewing the information.

D2002.7.80 – 2002 Cost Compliance Filing Regarding QFLT-1 and STPP-1: The PSC issued Final Order 6434c on 12/17/03. Several issues were deferred to the 2003 Cost Compliance Filing, such as CELP contract amendments, STPP cost basis, long term standard tariff and cost basis for small QF's, technology based standard rates, and limits on procurement. MCC was not active in this docket, but did review all the information.

ER03-1223-000 – Montana Megawatts I: NWE applied for approval for a power purchase agreement relating to Montana Megawatts. MCC and the PSC filed a joint motion to intervene and several related motions, such as motion to reject and motion for jurisdictional clarification of protest and request for hearing. Basically, the opinion of MCC and PSC is that jurisdiction doesn't belong at FERC and it is not a wholesale energy sale. MCC and PSC would like to maintain state authority to review this proposal, even though no position was taken on the merits of the proposed project, MCC and PSC are discussing this issue with NWE. FERC did issue an order conditionally accepting and suspending the power purchase agreement and a settlement judge was appointed so the settlement discussions currently taking place relate to this FERC docket. NWE did submit a proposal that MCC submitted discovery on and MCC is currently preparing a response to the company's proposal.

D2003.7.97 – NWE Gas Trackers: November Gas Tracker filed 10/15/03 resulted in a gas cost increase from \$4.5092 to \$4.6521 (Residential rates from \$7.84 to \$7.99, or 1.82%) December Gas Tracker filed 11/14/03 resulted in a gas cost reduction

from \$4.6521 to \$4.3182 (Residential rates from \$7.99 to \$7.65, or -4.18%) January Gas Tracker filed 12/15/03 resulted in a gas cost increase from \$4.3182 to \$4.5695 (Residential rates from \$7.65294 to \$7.90424, or 3.28%) February Gas Tracker filed 1/15/04 resulted in a gas cost increase from \$4.5695 to \$4.9949 (Residential rates from \$7.90 to \$8.33, or 5.4%)

D2003.6.77 NWE Electric Trackers: November Electric Tracker filed 10/15/03 resulted in a residential rate increase to \$.038822/kwh, or .9%. December Electric Tracker filed 11/13/03 resulted in a residential rate decrease to \$.037493/kwh, or -3.55%. January Electric Tracker filed 12/15/03 resulted in a residential rate increase to \$.037646/kwh, or .41%. February Electric Tracker filed 1/15/04 resulted in a residential rate increase to \$.037821, or .46%.

Montana Dakota Utilities

D2003.8.120 – MDU Application to Increase Electric Rates: MDU filed this application on 8/22/03 requesting a 10.73% overall increase. MDU filed a Notice of Withdrawal on 10/14/03, which the PSC approved in Order 6512a on 11/3/03.

2003.10.146 - MDU Gas Tracker: This tracker was filed on 10/10/03 resulting in a residential decrease of \$.195/dkt, to \$6.97/dkt.

D2003.12.172 - MDU Gas Tracker: This tracker was filed on 12/10/03, resulting in a residential increase of \$.0386 dkt, to \$7.35/dkt.

D2004.1.3 - MDU Gas Tracker: This tracker was filed 1/9/04 resulting in a residential increase of \$.043/dkt, to \$7.782/dkt.

Williston Basin

RP00-107-000: Much of the costs of MDU customers are flowed through and are affected by this Federal case with Williston Basin. Bob has mentioned before that there is a refund owing to Montana customers from a rate case from several years ago, although there are several motions for rehearing pending. The bulk of the refund is uncontested and Bob feels that the refund amount is \$7.4 million. MCC has been trying to get Williston Basin to voluntarily flow back the uncontested portion of

that refund, but their response has been that they want to wait until FERC makes a decision. So far FERC has not acted on this issue, so MCC is going to file a motion with FERC to see if they will order Williston to disburse these funds.

Energy West

D2003.9.129 – Application to Issue Securities: Energy West is going through some financial difficulties as a result of a lawsuit that they had on a payment they had to make to PPL Montana. Energy West filed this application to issue securities on 9/4/03 and after the NWE application for securities issuance and with the current NWE situation, Bob feels that these securities applications have taken a higher profile with the PSC than they have in the past. The PSC approved this application, but as they did with NWE, they attached some conditions so the financing, except for the portion of it that needs to be paid to PPL, is not used for non-utility purposes. The PSC is also trying to direct Energy West to become a utility focused company rather than diversifying in the areas that they have.

D2003.7.93 - Energy West Gas Tracker: The monthly tracker filed on 11/10/03 resulted in a \$.2015/mcf increase to residential rates, to \$6.3733/mcf. The monthly tracker filed on 12/10/03 resulted in a \$.772/mcf increase in residential rates, to \$7.29/mcf.

D2003.12.165 – Energy West Property Tax Expense Recovery: This application was filed on 11/26/03. Pursuant to HB642 from the 2003 legislative session, automatic flow through was allowed for property tax changes. Energy West had a dispute with the Department of Revenue over their property taxes but settled that dispute and is now seeking to flow through on this automatic recovery basis the estimate of their increased property tax liabilities, which amounts to a total increase of \$768,000 (3.6%). But, at the same time, they are proposing to only flow it through to certain customers, generally the smaller customers. Pursuant to HB642, the PSC had 45 days to issue its Notice of Action on Errors and Omissions, which they did on 12/31/03 before the surcharge became effective. They reduced the request to \$455,000 because Energy West had not yet offset the property tax increase with a

corresponding income tax decrease and they also raised some other issues, such as Energy West had not made any distinction between taxes paid and taxes expensed and the proposed rate design changes. MCC will be filing comments, generally reflecting the same concerns the PSC has already stated in their Notice of Errors and Omissions.

Mountain Water Company

D2003.8.122 – Annual Power Cost Tracker: MCC is currently working with MWC so this procedural schedule has been suspended. The PSC issued Interim Order 6515 on 10/17/03 approving an interim increase of \$240,279 (1.9%).

Wilder Resorts

D2003.12.152 - Application for Water Rate Increase: This application was filed on 12/12/03 requesting a 72% increase. Frank filed testimony, recommending a 48% increase. There is an issue of cost allocation and rate design so the result of Frank's recommendation is a slight decrease to their residential rate customers.

D2003.12.173 - Application for Sewer Rate Increase: This application was filed on 12/12/03 requesting an increase of 62%. Some of the same cost allocation and rate design issues in D2003.12.152 pertain to this docket as well.

Public Service Commission

D2003.10.151 – Natural Gas Acquisition Strategies: As a result of the concern of what can be done with high gas prices and as a result of the aftermath of the NWE case that disallowed some gas purchases as imprudent, the PSC issued Notice of Inquiry on 11/7/03 forming a roundtable discussion with many interested parties on current purchase practices. Bob stated that the utilities generally do many similar things but have also gone in separate directions. MDU for example is happy staying with its short-term purchase program and NWE is moving in a direction that they feel the PSC prefers for some longer-term purchases for purposes of hedging. One of the key conclusions that came out of the roundtable discussion was that the PSC would probably not pursue a generic statewide policy but would allow MDU and

NWE and other utilities to have a utility specific plan as long as they had some type of planning activity that the PSC could review. As a result of that, thinking that this could be utility specific, NWE recently filed a company specific tariff where they try to set out in tariff format their procurement guidelines. MCC is in the process of reviewing this.

D2003.10.150- Alternative Dispute Resolution: The PSC issued Notice of Inquiry on 10/22/03 proposing to establish a more formal policy supporting alternative dispute resolution and to lay out some guidelines and principals. MCC's general reaction was to favor alternative dispute resolution, as we have entered into settlements with companies and have participated in round tables discussions. But a lot of the motivation for what the PSC is doing here was trying to achieve more PSC control over the process and there is mixed feelings among commissioners on this. The PSC has the responsibility to approve these proposed settlements and if they don't understand some or all of them, they have the right and the authority to require parties to provide information, which they have done in the past to satisfy themselves that the settlement is in the public interest. MCC generally agrees with the direction that the PSC is going in terms of alternative dispute resolution, but MCC has concerns about the PSC making the process less flexible in inserting PSC or PSC staff indirectly in this process, taking away the ultimate ability for parties that are not able to reach settlements to go to unbiased and neutral decision makers. PSC decision still pending on this.

D2003.7.87 - Petition of Attorney General for Refunds: There is not a lot of activity in this docket, but recently there was a meeting to help the PSC understand exactly what the Attorney General is seeking, and the meeting was not very successful in moving things forward. The meeting was at staff level, so in the future there may be a meeting with the Attorney General and the Commissioners. MCC is assessing this petition.

RTO WEST

RTO West Application and Formation: Larry Nordell has been participating in meetings about the new compromise proposal that was put together by the platform group. Basically what this involves is moving toward a region wide transmission system and all of the things that were originally planned in RTO West in terms of a centrally managed system with locational marginal pricing and such in incremental steps in such a way that it can be stopped or modified along the way. The process would be controlled to some extent by a trustee selection group that originally was for the purpose of selecting trustees, but it has been given the new function of saying yes or no to several key milestones along the way, so the makeup of this trustee selection group has become more critical. Larry is trying to make sure that there is a place for consumer representatives in one of these parts of the trustee selection group.

MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

Long Distance Cases

Mary gave the committee some background on the Federal Telecommunications Act which continued the prohibition in place against Bell Operating Companies offering long distance in their regions. Qwest was granted approval from the Federal Communications Commission (FCC) on a showing that it had opened its networks to competition so they did get authorization to enter long distance.

D2002.12.153 – Qwest Long Distance Corporation (QLD): Qwest filed this application on 12/9/02 and it was their first long distance filing. MCC intervened in this case and had concerns about their service offerings, such as their rate plans. MCC thought they were priced below cost and that they tied the long distance service to Qwest local service. MCC felt this was not good for the market, and they also attempted to limit use of their plans to voice only, which MCC felt they didn't have the authority to impose. This has been a long and difficult case but the PSC has recently decided that it would regulate Qwest Long Distance very loosely, like it does the other long distance carriers such as AT&T, Sprint and MCI. One of the implications of that is that the PSC will not regulate the rates. MCC's pricing and

costing concern will not be addressed but the PSC did accept MCC's other concerns. A final order has not been issued yet, so MCC will look at exactly how the order is written before any decision is made to challenge the costing and pricing decision.

D2003.10.153 – Qwest Communications Corporation (QCC): QCC has actually been in business outside of Qwest's 14 state region for quite some time offering long distance service. QCC was originally intended to be the in region provider as well, but Qwest Corporation International and some of its affiliates had to restate their books, so at this time QCC was unable to certify that its books were in order. This restatement was completed and on 10/21/03 QCC filed its tariffs. How this case proceeds is almost entirely dependent on the Final Order in the QLD Case.

Eligible Telecommunications Carriers (ETC)

ETC status is when a competitor in local service areas can receive Universal Service Funds from the Federal Government in addition to the incumbent local exchange carrier. To get ETC status, carriers must apply to the PSC to prove that they provide the service required by Federal Law and that ETC status for that company is in the public interest. They receive support for every customer they take away from the incumbent and every new customer that is not also a customer of the incumbent. The amount of support per line is the same as the amount for incumbents. The competitors don't have to prove their costs.

D2003.1.14 – Western Wireless: Western Wireless applied for ETC status on 1/29/03 in the areas where Qwest is the incumbent. MCC has filed testimony recommending certain changes to Western Wireless's filing and some reporting requirements. In addition, Western Wireless claims it does not have to show that its application is in the public interest, and so they have not made that case. They will have the opportunity to do so in their rebuttal testimony, due in February.

D2003.8.105 - Cable and Communications Corporation: Cable and Communications is a cellular affiliate of Mid-Rivers Cooperative and filed for ETC

status on 8/6/03 for areas served by the cooperatives landline network. MCC has not yet filed testimony, and the case is suspended pending resolution by the PSC of discovery disputes between the applicant, the Montana Independent Telephone Association and the Montana Telecommunications Association.

D2003.2.23 – 3 Rivers Telephone Cooperative: 3 Rivers Telephone Cooperative has applied for ETC status in the Qwest Shelby Exchange. MCC reviewed the application and discovery but saw no need to file testimony.

D2004.1.8 - Northern Communications Inc: Northern Communications Inc. filed for ETC status on 1/16/04 in the exchanges served by Northern Telephone Cooperative.

D2004.1.5 - Interbel Wireless Inc: Interbel filed for ETC status on 1/16/04 in the exchanges served by Interbel Telephone Cooperative Inc. and Citizens Communications Company.

D2004.1.6 - Triangle Communications System, Inc: Triangle Communications System filed for ETC status on 1/16/04 in the exchanges served by Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.

D2004.1.7 - Sagebrush Cellular, Inc: Sagebrush Cellular filed for ETC status on 1/16/04 in the exchanges served by Nemont Telephone Cooperative Inc., Project Telephone Company, Inc., and Valley Communications.

It appears that most of the ETC cases, other than Western Wireless and 3 Rivers, involve a cable affiliate of the incumbent, which may raise certain questions since the purpose of the universal service funds and ETC designation is to stimulate competition and give customers more choices.

Extended Area Service (EAS)

EAS provides local calling between or among exchanges eliminating the need to make toll call. EAS may involve different exchanges of the same provider, or of two or more providers. In each case, the applicants must establish that there is a “community of interest” by showing certain minimum call volumes or demographic connections.

D2003.1.8 – Blackfoot Telephone Cooperative and Qwest: Blackfoot petitioned the PSC to expand the existing Missoula EAS region to include all but one of its exchanges and to expand the existing Helena EAS. This case is currently in Phase II. While this case was pending, the Western Montana Local Calling Coalition (Ronan Telephone, Hot Springs Telephone, Committee of Ronan Telephone Customers and Confederated Salish Kootenai Tribes) filed a request to expand Blackfoot’s proposal to include Ronan and Hot Springs exchanges in the expanded Missoula area. Blackfoot originally resisted the Coalition’s request, they now have entered into a settlement agreement, filed 1/26/04, to delay implementation of its original proposal, if approved by the PSC.

D2002.11.145 – Northern Telephone Cooperative, Inc. and Qwest: Northern Telephone Cooperative has applied for regional EAS in the Shelby-Cut Bank area. After completion of Phase 1, Northern filed a request to suspend the proceedings.

D2002.10.132 – Triangle Telephone Cooperative, Inc., Central Montana Communications, Inc., and Qwest: Triangle Telephone and Central Montana Communications applied for EAS for the Havre, Lewistown, White Sulpher Springs and Great Falls area. This case is currently in Phase II.

D2003.6.84 – Lincoln Telephone Company and Qwest: Lincoln Telephone Company applied for expansion of the existing Helena EAS region to include its Lincoln Canyon Creek exchanges. This case is currently in Phase II.

Court Cases

CV 03-20-H-CCL (Federal District Court for the District of Montana, Helena Division): On 5/9/03 Ronan Telephone Company appealed from the PSC Final Order in Docket D2000.1.14, involving the rates, terms and conditions for interconnecting with Blackfoot Telephone Cooperative for the exchange of local traffic. The judge ordered the parties to brief the procedural issues in this case, and Ronan argues that this is not a typical review of administrative agency action, which would be confined to the record before the agency and argues that they are entitled to discovery and a trial on the issues that they raise. MCC and the PSC argue that the Court's review should be confined to the record. The issues are fully briefed and are awaiting the judge's decision before proceedings on its merits.

CDV 2003-464 Qwest vs PSC and CDV 2003-465 (Montana First Judicial District, Lewis and Clark County): The PSC issued two orders asking Qwest for financial information that it could use to decide whether or not Qwest was over earning or collecting in excess of its authorized return. Qwest refused to comply with the orders, saying the PSC did not have jurisdiction to issue them so they were unlawful. On 8/6/03, Qwest petitioned for judicial review of the two orders, challenging the PSC authority to require the information. Also on 8/6/03, the PSC filed a complaint seeking monetary penalties for its failure to comply with their orders. Qwest has filed a motion to suspend that case until their case is complete. The PSC has filed a motion to consolidate the cases and both are currently in preliminary stages.

03-9617 – Qwest Communications International vs FCC and United States of America (United States Court of Appeals for the Tenth Circuit): The PSC and MCC have filed notices of intervention in this petition for judicial review of an order of the FCC on remand from a previous 10th Circuit decision. The order that Qwest seeks to have reviewed deals with provisions of the federal Universal Service Fund that affects how much support providers like Qwest (and states like Montana) receive. Qwest, the PSC and MCC previously challenged the FCC's findings regarding comparability of urban vs rural rates and the sufficiency of the USF.

Senator Shea asked Mary if other states were having similar interaction with Qwest in the 10th circuit case and if Mary drew on any similarities with other states or if resources between states were ever pooled in these cases. Mary stated that there will be other states joining in on the appeal. These cases are relatively low in cost because the main effort falls in writing briefs. The other Qwest cases are Montana-specific. There is an organization called Regional Oversight Committee (ROC) that was set up in recognition that Qwest has a multi-state operation and they had an advantage knowing what was going on with the states so the State Commissions formed ROC. They hold periodic meetings, which Mary has gone to, and share information on if they wanted to intervene together in some of these dockets.

FINANCIAL REPORT

The financial report given to the committee members was for the first six months of the year and as usual some areas run significantly behind. In all categories the finances look fine but contracted services could be difficult because of all the pending cases, specifically the bankruptcy proceeding expenses and it appears a good portion of the contingency fund could end up being used this year. There is also another \$100,000 in carry forward authority from prior unexpended amounts in 2003 that may be used, but so far it looks like things can be managed within the base and contingency fund appropriation.

AUDIT

After an audit of MCC's finances was completed for Fiscal Years 2002 and 2003, the audit was presented before the Legislative Audit Committee. The presentation went smoothly and was very brief.

HIRING OF EXPERT WITNESSES

MOTION: Representative Olson moved approval to hire the services of John Wilson to review the Default Supply Procurement Plan and resource specific filings that fall under the plan.

VOTE: The motion passed unanimously.

MOTION: Senator Shea moved approval to hire the services of Al Clark, if needed, to review revenue requirements in the bankruptcy proceeding.

VOTE: The motion passed unanimously.

Public Comments

Based on HB94 requirements, a public comment period was offered, but none was given.

Adjournment

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this ____ day of _____, 2004

_____, Chairman